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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,020	09/21/2001	Christopher McDowell	COD-133	7026

27777 7590 09/12/2005

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EXAMINER
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PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## 3728

Part of Paper No./Mail Date 09062005

### DETAILED ACTION

1. This Office Action acknowledges the applicant's amendment submitted 1 July 2005. Claims 1, 3, 6, 8, 9, 11, 12, and 16 are pending in the application. Claims 2, 4, 5, 7, 10, and 13-15 have been canceled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections - 35 USC § 103*

3. Claims 1, 3, 6, 8, 9, 11, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson et al (US 5,968,044) in view of Asa et al (US 6,098,802) and Nguyen et al (US 5,873,462).

Regarding claim 1, Nicholson et al discloses a surgical fastener (**10**, **34**, and **70**) in the form of a disposable portion (**100**, see Col. 16, lines 2-10). Nicholson et al suggests placement of the surgical fasteners in a sterile tray (see for example, Col. 3, lines 37-38) but does not disclose the structure of said tray.

Both Asa et al and Nguyen et al disclose trays for the sterile storage of disposable portions (see for example, Asa Col. 1 line 17, and Nguyen Col. 2, lines 54-56).

Asa et al discloses a tray **10** with a base **12**, a plurality of wells **18**, a plurality of articles **P** disposed in the wells **18**, and a film **30**. Asa et al teaches the isolated wells to prevent cross-contamination.

Nguyen et al discloses tray **10** with a base **30**, a plurality of wells **31**, a plurality of articles **100** disposed in the wells **31**, and a film **150**. Nguyen et al anticipates scoring of the film **150** to allow for the controlled breaking of the film (see for example, Col. 3, lines 57-63).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the disposable surgical fastener assemblies of Nicholson et al in a tray as taught by either Asa et al or Nguyen et al in order to provide for independent dispensing of the fasteners.

The assembly of Nicholson-Nguyen discloses the claimed invention.

The assembly of Nicholson-Asa discloses the claimed invention except for the weakness in the film. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the film of Nicholson-Asa with scoring as taught by Nguyen et al in order to control the breakage of the film.

As to claim 3, the assemblies of Nicholson-Asa-Nguyen and Nicholson-Nguyen disclose scoring (see Nguyen, Col. 3, lines 57-63).

As to claim 6, the assemblies of Nicholson-Asa-Nguyen and Nicholson-Nguyen disclose scoring (see Nguyen, Col. 3, lines 57-63) as an ingress means.

Regarding claims 8 and 9, both of the assemblies of Nicholson-Asa-Nguyen and Nicholson-Nguyen, as applied to claim 1, disclose the provision of the tray, the provision of the fastener, the covering of the well, and the modification of the film by presentation.

As to the sterilization, both Asa et al and Nguyen et al disclose sterilization (see for example, Asa, Col. 5 line 65 to Col. 6, line 7, and Nguyen Col. 3, lines 46-50) and it

would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature for the assemblies either of Nicholson-Asa-Nguyen or Nicholson-Nguyen since the fasteners of Nicholson-Asa-Nguyen and Nicholson-Nguyen are to be used in a surgical procedure.

As to the penetration of the film, both Asa et al and Nguyen et al disclose accessing the articles by penetration of the film with an instrument (see Asa Figure 6, and Nguyen, Col. 3, lines 57-67).

As to claims 11 and 12, the assemblies of Nicholson-Asa-Nguyen and Nicholson-Nguyen disclose scoring (see Nguyen, Col. 3, lines 57-63).

As to claim 16, both Asa et al and Nguyen et al disclose accessing the articles by penetration of the film with an instrument (see Asa Figure 6, and Nguyen, Col. 3, lines 57-67). Both Asa et al and Nguyen et al form assemblies with the articles and instruments, which are necessary for their intended use. It would have been obvious to one of ordinary skill in the art at the time the invention was made to penetrate the film of the assemblies of Nicholson-Asa-Nguyen or Nicholson-Nguyen with the applier (Nicholson 120) as taught by both Asa et al and Nguyen et al in order to form an assembly for the application of the fastener.

### ***Response to Arguments***

4. Applicant's arguments filed 1 July 2005 have been fully considered but they are not persuasive. While Nicholson et al does disclose a preferred embodiment wherein the tray holds the fasteners in addition to other components of the assembly, this does

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not detract from the fact that disposable cartridges are also disclosed (see for example, Col. 16, lines 2-10). And it is in this specific embodiment that the examiner has looked to the teachings of Asa and Nguyen for the individual dispensing of the cartridge devices. As duly noted by the applicant, Asa teaches isolated wells in the tray to prevent cross-contamination and Nguyen teaches scoring of the film in addition to isolated wells. The examiner, therefore, maintains that the references of Nicholson et al, Asa et al, and Nguyen et al, when taken as a whole, renders the claimed invention obvious.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Greg Pickett  
Examiner  
6 September 2005

  
**ANTHONY D. STASHICK**  
**PRIMARY EXAMINER**